



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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Mary Catherine Malin, Esquire
Office of Diplomatic Law and Litigation
Office of the Legal Advisor
United States Department of State
Washington, D.C. 20520

RE: MUR 4583

Dear Ms. Malin:

Attached is a letter and brief to be forwarded to the Embassy of India. As before, this correspondence pertains to an open Commission investigation and may not be made public by any person or entity, so please ensure its continuing confidentiality. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, reading "Dominique Dillenseger".

Dominique Dillenseger
Attorney

Attachment



FEDERAL ELECTION COMMISSION
Washington, DC 20463

JUN 30 1998

His Excellency Naresh Chandra
Ambassador of India
2107 Massachusetts Avenue, N.W.
Washington, D.C. 20008-2811

RE: MUR 4583

Dear Mr. Ambassador:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission ("Commission") had found reason to believe that the Embassy of India and Davendra Singh ("respondents") knowingly and willfully violated 2 U.S.C. §§ 441e and 441f and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

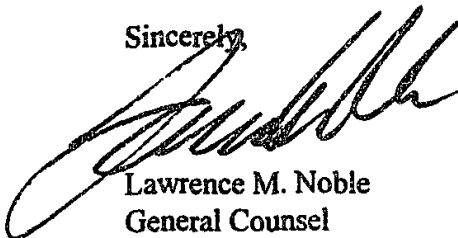
The Commission may or may not approve the General Counsel's recommendation. Submitted for the respondents' review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, the respondents may file with the Secretary of the Commission a brief (ten copies if possible) stating their position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which the respondents may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If the respondents are unable to file a responsive brief within 15 days, they may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

While Dominique Dillenseger is the attorney assigned to this matter, please feel free to telephone me directly with any further questions you may have, at (202) 694-1650.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lawrence M. Noble", written over the typed name.

Lawrence M. Noble
General Counsel

Enclosure
Brief

10520-452-10-66

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4583
The Embassy of India and Davendra Singh)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

In the 1993-94 election cycle, Lalit Gadhia solicited numerous individuals to contribute money to the Indian-American Leadership Investment Fund ("IALIF"), a political committee, or directly to federal candidate committees. Mr. Gadhia reimbursed these individuals for their contributions. Subsequently, Mr. Gadhia was criminally prosecuted and pled guilty to causing a false statement to be made to the Federal Election Commission ("FEC" or "Commission") in connection with FEC reports which were filed by the IALIF and political committees listing funds contributed in the name of another. Public court documents in the prosecution of Mr. Gadhia state that the funds used for the illegal contribution scheme he carried out were provided by Davendra Singh, a foreign national and then Minister for Personnel and Community Affairs at the Indian embassy in Washington, D.C., and that Mr. Gadhia sent documents in connection with this scheme addressed to Minister Singh at the embassy.

The Federal Election Campaign Act of 1971, as amended ("the Act"), in relevant part, explicitly prohibits foreign nationals, including foreign governments, from contributing directly or indirectly to U.S. elections. The Act also prohibits the making of contributions through "straw donors" to hide the true source of the contributions. The involvement of a foreign government in the making of up to \$60,000 in illegal contributions to U.S. federal elections is a serious matter and a violation of the Act.

On November 12, 1996, the Commission, based on information ascertained in the normal course of carrying out its supervisory responsibilities, found reason to believe that the Embassy of India and Davendra Singh knowingly and willfully violated 2 U.S.C. §§ 441e and 441f and conducted an investigation.

It has been over a year and a half since the Commission notified the Embassy of India of its findings and the General Counsel has made repeated attempts to have the embassy address the issues in the Factual and Legal Analysis. In its initial correspondence to the Commission, the embassy did not provide any information relating to the activities set out in the Factual and Legal Analysis, except to state that the activities described therein "do not concern any of the offices established in this Mission nor is there any provision of funds in this Mission for such activities" The embassy has also stated that under the Vienna Convention on Diplomatic Relations of 1961, "embassies and diplomatic agents are not subject to the legal process of the receiving State" and that the embassy would not "correspond or interact" with the Commission except "through its interaction with the State Department." In subsequent correspondence to the Commission and in diplomatic notes transmitted through the United States Department of State, the Embassy communicated its intent to voluntarily cooperate with the Commission's investigation and to provide information on this matter.¹ By letter dated December 5, 1997, the Commission requested that the Embassy respond to informal questions and document requests and respond by January 30, 1998. The Government of India agreed to respond by that date but

¹ In addition, published news reports (Washington Times, June 11, 1996, page A12) described an intent by Ambassador Naresh Chandra to release the Indian government's information about the transactions after Lalit Gadhia's sentencing. Mr. Gadhia was sentenced on August 8, 1996.

did not provide a reply until June 18, 1998. In an Aide Memoire dated June 18, 1998, the embassy provided no information and no documentation relating to the activities set out in the Factual and Legal Analysis, claiming that it had little information on the matter because it related to "informal contacts" involving the embassy and the Indian community and it maintained no records on such contacts. The embassy also claimed that it "has no records of meetings" involving Mr. Gadhia, Sachinder Gupta, and Minister Singh or other embassy officials and "no documents relating to Mr. Davendra Singh's contacts with Mr. Lalit Gadhia during the period 1994-95." The embassy did not address Minister Singh's activities in the reimbursement scheme except to state that Minister Singh's responsibilities as Minister of Community Affairs included "participation in community activities and social functions" but not "directing any funds towards US elections," and that its "records show that no funds were placed with Mr. Davendra Singh for any such purposes."²

II. FACTUAL AND LEGAL ANALYSIS

A. APPLICABLE LAW

Under the Act, foreign nationals are explicitly prohibited from making contributions or expenditures in connection with any U.S. election (federal, state or local), either directly or indirectly. 2 U.S.C. § 441e. In addition, a foreign national may not participate in or control the election-related activities of a person or organization. 11 C.F.R. § 110.4(a)(3). The term "foreign national" is defined at 2 U.S.C. § 441e(b) and includes a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under Section 611(b), a "foreign principal" includes "a

² The Commission's reason to believe notification was addressed to the Embassy of India. The embassy has apparently never forwarded the notification to Minister Davendra Singh and we have not received a separate response from Minister Singh.

government of a foreign country.”³ The Act also prohibits the making of contributions in the name of another and knowingly helping or assisting any person in making such contributions. 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(iii).

A foreign state must necessarily act through its agents. Foreign government officials acting in their official capacities are considered agents of the foreign state and acts committed within the scope of their official authority are considered acts of the foreign state. *Jungquist v. Nahyan*, 115 F.3d 1020 (D.C. Cir. 1996); *Chuidian v. Philippine Nat'l Bank*, 912 F.2d 1095 (9th Cir. 1990). When an agent acts within the scope of his authority, a principal cannot escape responsibility on the grounds that he lacked knowledge of the agent's actions, or that the agent's actions were unauthorized, tortious, or even unlawful. 3 Am. Jur. 2d Agency § 280 at 783.

The Act addresses violations of law that are knowing and willful. See 2 U.S.C. § 437g(a)(5)(B). The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985 (D.N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful violation may be drawn "from the defendants' elaborate scheme for disguising" their actions. *Id.* at 214-15.

³ The diplomatic mission of a foreign country is considered part of the government of the foreign country. See *Segni v. Commercial Office of Spain*, 650 F. Supp. 1040 (N.D.Ill. 1986); *Gray v. Permanent Mission of People's Republic of Congo to United Nations*, 443 F. Supp. 816 (S.D.N.Y. 1978), *aff'd*, 580 F.2d 1044 (2d Cir. 1978).

B. FACTS AND ANALYSIS

In August-September 1994, Davendra Singh, then Minister for Personnel and Community Affairs and an intelligence officer at the Embassy of India, and Lalit Gadhia, a politically active Baltimore attorney, began a scheme in which federal contributions of up to approximately \$60,000 were made using straw donors.

Mr. Gadhia was heavily involved in political activities and held important positions on finance committees for numerous local, state, federal, and presidential candidates. Mr. Gadhia also acted as president of STEP-IN and as legal counsel for the India Forum, two local Indian-American cultural organizations.

Mr. Gadhia established his relationship with the Indian embassy through involvement in India Forum banquets and STEP-IN events which used newsletters and invitations to attract embassy personnel, including ambassadors, to its events. He had contact with the Indian ambassadors dating back to Ambassador Abid Hussain sometime in 1990 or 1991. In addition, Mr. Gadhia attended numerous Indian national holiday events at the embassy over a period of time up until 1994 or 1995. In his capacity as a legal counsel for the India Forum and STEP-IN, Mr. Gadhia interacted a great deal with Minister Singh on an ongoing basis. He commenced contact with Minister Singh through correspondence and frequent visits by Minister Singh to Mr. Gadhia's office which occurred during the period 1990-1994.

According to Mr. Gadhia, Minister Singh initiated the idea for the reimbursement scheme. In August-September 1994, Minister Singh engaged Mr. Gadhia in a conversation concerning political fundraising at a luncheon in Washington, D.C. Minister Singh knew that Mr. Gadhia was active in supporting candidates and attempting to raise money within the Indian-

American community. Minister Singh asked Mr. Gadhia if he could use any help, e.g. money, if it was available. Mr. Gadhia responded that, "yes", he could use some help if it was made available. Soon thereafter, Minister Singh contacted Mr. Gadhia and proposed to make some "resources available" and a meeting was scheduled at the Holiday Inn, Laurel, Maryland, in late September, or early October 1994. This meeting place was neither in Baltimore, where Mr. Gadhia was, nor in Washington, where Minister Singh was, but at a hotel restaurant midway between the two cities.

During the course of two meetings in September-November 1994, Minister Singh offered Mr. Gadhia a total of approximately \$60,000 in cash and indicated that he wanted Mr. Gadhia "to channel it to appropriate candidates in the federal election, the upcoming '94 federal election." At this first meeting in Laurel, Minister Singh gave Mr. Gadhia an envelope containing \$40,000 in fresh, consecutively-numbered \$100 bills. Mr. Gadhia did not have any knowledge or impression of Minister Singh's financial situation. Mr. Gadhia stated that at that first meeting he asked Minister Singh whether this was Indian government money because he thought "it would be a serious matter if it was government money" and because he "did not want to become an agent" of India. Mr. Gadhia stated that Minister Singh responded "no" to that question and further stated that for him (Gadhia), "[t]hat was good enough. I didn't want to know anything more about it."

Two or three weeks later, Mr. Gadhia met with Minister Singh again after Minister Singh contacted Mr. Gadhia and asked if he could use more money and Mr. Gadhia responded affirmatively. At this second meeting in Laurel, Maryland, Minister Singh gave Mr. Gadhia another packet containing \$20,000 in cash. Mr. Gadhia states that, this second time, he did not

ask Minister Singh about the source of the money. At this meeting, Mr. Gadhia informed Minister Singh that he was: (1) channeling funds to the PAC (IALIF); (2) making contributions through different individuals to the PAC; and (3) coordinating with the PAC as to whom should get the money. Mr. Gadhia has claimed that a portion of the money was unused and returned to Minister Singh at a third meeting Mr. Gadhia initiated at the Holiday Inn in Laurel.

After the receipt of the money from Minister Singh, Mr. Gadhia kept the money in his car for a few days and then in a locked safe in his office. He told no one about the transactions between himself and Minister Singh. He then proceeded to approach and reimburse numerous individuals for contributions. He reimbursed them by providing cash (in the form of \$100 bills) in exchange for personal checks either at his office or at a meeting place. Mr. Gadhia approached 45 individuals (either directly or through one of seven solicitors) who agreed to write checks to either the IALIF or directly to federal candidates in return for reimbursements. During October-November 1994, Mr. Gadhia forwarded to the IALIF 41 checks from 41 individuals totaling \$34,400. In addition, Mr. Gadhia solicited approximately \$26,000 in reimbursed contributions from individuals which were sent directly to candidate committees.

Finally, Mr. Gadhia sent to Minister Singh's attention at the Embassy of India a list of "who was receiving contributions and who was contributing." This list was sent without a cover letter. According to Mr. Gadhia, after the third meeting in Laurel there was no other contact between himself and Minister Singh, or any other officials from the embassy, except for a farewell party for Minister Singh later that winter.

Several factors raise a strong inference that the money Minister Singh supplied to Mr. Gadhia came directly or indirectly from the Government of India: (1) Davendra Singh, the

individual who initiated the reimbursement scheme and supplied the funds, was the Minister for Personnel and Community Affairs at the Embassy of India and this activity was undertaken in his official capacity as an embassy official furthering the interest of the Indian government; (2) the large amount of money involved (approximately \$60,000 supplied in two installments of \$40,000 and \$20,000) and the form in which the money was delivered -- cash, in fresh, consecutively-numbered \$100 bills -- suggest that the money probably did not come from Minister Singh's personal funds or from multiple accounts of various wealthy Indian-American donors; and, (3) Mr. Gadhia sent documents addressed to Minister Singh at the embassy accounting for how the money was used (documents listed the names and addresses of the contributors, the amount of each contribution, and the committees to which the contributions were made) which suggests that this was an embassy matter rather than a personal matter. Although Mr. Gadhia has claimed that he sought assurances from Minister Singh that the money was not from the Government of India, his admission that he did not want to know more information about the source of the money, given his professional status as an attorney and his wide experience as a campaign fund-raiser, raise doubts on the veracity of his assertions regarding the origin of the money provided by Minister Singh, suggesting the possibility that these claims are just *post hoc* rationalizations. Given Minister Singh's position, his involvement on behalf of the Embassy of India, and his role in initiating the reimbursement scheme and supplying the funds for the scheme, absent other information, the Government of India was the likely source of the funds.

Further, the elaborate efforts undertaken to mask the source of the funds points to the likelihood that Minister Singh knew that it was illegal for him and the Indian embassy to engage in this activity. See *Hopkins* 916 F.2d at 214-15. Clear evidence of the covert nature of these

activities and the intent to disguise the source of the money is evidenced by: (1) Mr. Gadhia's meetings with Minister Singh at a hotel restaurant in Laurel, Maryland (midway between Baltimore and Washington, D.C. and thus away from either party's office) where Minister Singh handed Gadhia envelopes containing first \$40,000 and then \$20,000 in \$100 bills; (2) Mr. Gadhia's reimbursement of straw donors with cash; and, (3) Mr. Gadhia's list of contributors sent to Minister Singh without a cover letter. All these factors, under *Hopkins*, would serve as a basis for "knowing and willful" violations. Finally, the seriousness of these violations is evidenced by the prosecution under U.S. criminal laws of Lalit Gadhia, the U.S. citizen most responsible for this scheme.

As the Embassy of India's Minister for Personnel and Community Affairs, Minister Singh was an agent of the Government of India for acts committed within the scope of his official authority. The position of Minister of Community Affairs presumably encompasses various public relations-type activities to advance the Government of India's interest within the local community and with the United States government. Indeed, the investigation of this matter reveals that Minister Singh was actively involved in local Indian-American activities and tracked Congressional activity on India-related matters, providing Indian Americans with information on India-related bills in Congress and urging them to write Congress about such bills.⁴ The facts of this matter reveal that Minister Singh supplied money to Mr. Gadhia for use in making political contributions to candidates in the 1994 U.S. federal elections and that the money used came from

⁴ One of the straw donors has stated that Minister Davendra Singh was responsible for community relations between the Indian embassy and Indian Americans and that he attended various social functions held by the India Forum. The individual also reported that at these functions Minister Singh provided copies of bills regarding India which were introduced in Congress and urged the attendees to write Congress about these bills.

Indian government sources. The making of political contributions is properly characterized as public relations or marketing-type activities undertaken to influence or advance a foreign government's interest with the United States Congress. See MUR 2892 (Coordination Counsel for North American Affairs (Taiwan)). Given the above, it appears that Minister Singh's activities in the reimbursement scheme were undertaken within the scope of his authority as Minister for Personnel and Community Affairs and, therefore, as agent for the Government of India. Foreign nationals and foreign states, however, are specifically prohibited under 2 U.S.C. § 441e from making political contributions and participating in or controlling the election-related activities of a person or organization. The means used by the Embassy of India to further its interest with the U.S. Congress were illegal. Its activities were also in violation of 2 U.S.C. § 441f which prohibits the making of contributions in the name of another or assisting others in the making of such contributions.

In light of the foregoing, the General Counsel's Office is prepared to recommend that the Commission find probable cause to believe that the Embassy of India and Davendra Singh knowingly and willfully violated 2 U.S.C. §§ 441e and 441f by supplying up to \$60,000 to Lalit Gadhia for the purpose of channeling the money to candidates in the 1994 federal elections, which funds were used to reimburse numerous individuals for campaign contributions to various political committees.

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the Embassy of India and Davendra Singh knowingly and willfully violated 2 U.S.C. §§ 441e and 441f.

Date

6/30/98


Lawrence M. Noble
General Counsel